

MT LEGISLATIVE HISTORY

Chapter 586 19 81

Bill H _____ (S) 485

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) April 13 ☒ C

Hearing Date(s) March 25 ☒ C

_____ C

_____ C

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_____ C

_____ C

Date Out _____ C

March 25 ☒ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

SENATE BILL NO. 485

INTRODUCED BY BERG, HALLIGAN, J. O'HARA, CRIPPER, REGAN,
OLSON, MAZUREK, B. BROWN, M. ANDERSON, S. BROWN

INTRODUCED BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

March 19, 1981	By motion and consent, Senate Bill No. 485 allowed to be introduced and con- sidered this session.
March 23, 1981	Introduced and referred to Committee on Judiciary.
March 26, 1981	Committee recommend bill do pass as amended. Report adopted.
March 27, 1981	Bill printed and placed on members' desks.
March 28, 1981	Second reading, do pass. Correctly engrossed.
March 30, 1981	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

April 9, 1981	Introduced and referred to Committee on Judiciary.
April 13, 1981	Committee recommend bill be concurrent in as amended. Report adopted.
April 17, 1981	Second reading, concurred in as amended.

April 17, 1981

On motion rules suspended
and bill placed on third
reading this day.

Third reading, concurred in
as amended. Ayes, 96; Nays, 0.

IN THE SENATE

April 21, 1981

Returned from House with
amendments.

By motion and consent, House
amendments allowed to be
received and considered
this session. Motion adopted.

April 22, 1981

Second reading, amendments
not concurred in.

On motion Free Conference
Committee requested and
appointed.

Free Conference Committee
reported.

April 23, 1981

Second reading, Free Confer-
ence Committee report adopted.

Third reading, Free Confer-
ence Committee report adopted.
Ayes, 47; Nays, 1. Trans-
mitted to House.

IN THE HOUSE

April 23, 1981

Free Conference Committee
report adopted.

IN THE SENATE

April 23, 1981

Returned from House. Sent
to enrolling.

Reported correctly enrolled.

1 ~~Memorandum~~ *Rob Brown Mike Anderson*
2 ~~INTRODUCED BY~~ *SENATE* BILL NO. *485* *STEVE BROWN*
3 ~~INTRODUCED BY~~ *Berg, Holligan, J. Carter, Crayton*
Blum OF THE SENATE JUDICIARY COMMITTEE

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A SMALL
5 CLAIMS COURT PROCEDURE WITHIN JUSTICES' COURTS; PROVIDING
6 FOR JURISDICTION OF THE SMALL CLAIMS COURT, THE METHOD OF
7 COMMENCING ACTIONS, HEARINGS, COUNTERCLAIMS, SUBPOENA
8 POWERS, REMOVAL TO JUSTICE'S COURT, AND APPEALS TO DISTRICT
9 COURT; AMENDING SECTION 25-31-112, MCA; REPEALING TITLE 25,
10 CHAPTER 35, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12 WHEREAS, in 1977 the Montana Legislature enacted the
13 provisions of Chapter 572, Laws of 1977, creating a small
14 claims court within justices' courts in Montana, which
15 provisions are codified as Title 25, chapter 35, MCA; and

16 WHEREAS, the small claims procedure makes no provision
17 for a jury trial, provides that one party may not be
18 represented by an attorney if the other party is not so
19 represented, and provides that an appeal from the small
20 claims court is to be tried on the record of the case and is
21 not to be tried as a trial de novo; and

22 WHEREAS, the Montana Supreme Court has held in the case
23 of North Central Services, Inc. v. Hafdahl, __Mont.__,
24 __P2d__, (Civil No. 80-228, decided March 11, 1981), that
25 the cumulative effect of these provisions is to deny the

1 right to a jury trial and the right to counsel at every
2 stage of the factual determination of a case in small claims
3 court; and

4 WHEREAS, the Supreme Court therefore held section
5 25-35-403(2), MCA, to be unconstitutional and also held the
6 remainder of Title 25, chapter 35, unconstitutional and void
7 for the reason that it could not be severed from section
8 25-35-403(2), MCA.

9 THEREFORE, it is the intent of the Legislature to cure
10 the unconstitutionality of Title 25, chapter 35, by
11 repealing and reenacting those provisions with such changes
12 as to cure the unconstitutionality of those provisions.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Purpose. It is the purpose of
16 [this act] to provide a speedy remedy for small claims and
17 to promote a forum in which such claims may be heard and
18 disposed of without the necessity of a formal trial.

19 NEW SECTION. Section 2. Jurisdiction. The small
20 claims court has jurisdiction over all actions for the
21 recovery of money or specific personal property when the
22 amount claimed does not exceed \$750, exclusive of costs, and
23 the defendant can be served within the county where the
24 action is commenced.

25 NEW SECTION. Section 3. Removal from district court.

1 A district court judge may require any action filed in
2 district court to be removed to the small claims court if
3 the amount in controversy does not exceed \$500. The small
4 claims court shall hear any action so removed from the
5 district court.

6 NEW SECTION. Section 4. Venue. Proper venue for
7 actions commenced in the small claims court is the same as
8 that provided by law for civil actions commenced in
9 justice's court.

10 NEW SECTION. Section 5. Parties -- representation.

11 (1) Parties in the small claims court may be individuals,
12 partnerships, corporations, unions, associations, or any
13 other kind of organization or entity, except the state or
14 any agency thereof.

15 (2) A party may not be represented by an attorney
16 unless all parties are represented by an attorney in a small
17 claims court.

18 (3) An individual may represent himself in a small
19 claims court. A partnership may be represented by a partner
20 or one of its employees. A union may be represented by a
21 union member or union employee. A corporation may be
22 represented by one of its employees. An association may be
23 represented by one of its members or by an employee of the
24 association. Any other kind of organization or entity may be
25 represented by one of its members or employees.

1 (4) Only a party, natural or otherwise, who has been a
2 party to the transaction with the defendant for which the
3 claim is brought may file and prosecute a claim in the small
4 claims court.

5 (5) No party may file an assigned claim in the small
6 claims court.

7 (6) No party may file more than three claims in any
8 calendar year.

9 (7) Notwithstanding any other provision of this
10 section, a personal representative of a decedent's estate, a
11 guardian, or a conservator may be a party in the small
12 claims court.

13 NEW SECTION. Section 6. Commencement of action --
14 assistance to claimant. (1) A small claims action is
15 commenced whenever any person appears before a justice of
16 the peace and executes a sworn small claims complaint in
17 substantially the same form as set forth in [section 7].

18 (2) The justice shall assist any claimant in preparing
19 his complaint or instruct his clerk to provide such
20 assistance. The attorney general shall prepare a pamphlet
21 explaining in plain language the procedures for prosecuting
22 and defending a claim in small claims court and distribute a
23 sufficient number of copies of the pamphlet to each small
24 claims court. The justice or his clerk shall give the
25 plaintiff a copy when the plaintiff appears to execute his

1 complaint, and a copy must be attached to the order of the
2 court/notice to defendant.

3 NEW SECTION. Section 7. Form of complaint and order
4 of court/notice to defendant. The sworn complaint and order
5 of the court shall be made on a blank substantially in the
6 following form:

7 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
8 COURT OF COUNTY, MONTANA
9 BEFORE, JUSTICE OF THE PEACE
10
11
12 Plaintiff,

13 vs. Complaint
14 Case No.
15

16 Defendant(s)
17

18 Comes now the plaintiff, being first duly sworn, upon
19 oath, and complains and alleges that defendant is indebted
20 to plaintiff in the sum of \$....., for.....
21
22
23 which sum is now due, owing, and unpaid despite demands for
24 the payment thereof, together with plaintiff's costs herein
25 expended.

1 Dated this day of, 19....

2
3 Plaintiff

4
5 Plaintiff's address

6 Subscribed and sworn to before me this day of
7, 19....

8
9 Justice of the peace
10 By:.....
11 Clerk, small claims
12 division

13 ORDER OF COURT/
14 NOTICE TO DEFENDANT

15 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

16 You are hereby directed to appear and answer the within
17 and foregoing complaint at:

18
19
20 on..... at
21 Reset for at
22 Reset for at
23 Reset for at

24 and to have with you, then and there, all books, papers, and
25 witnesses needed by you to establish your defense to the

1 claim; and you are further notified that in case you do not
2 appear, judgment will be taken against you by default for
3 the relief demanded in the complaint and for costs of this
4 action, including costs of service of the complaint and
5 order of the court/notice to defendant.

6 To the Sheriff, Constable, or Server of process of said
7 county, greetings:

8 Make legal service and due return thereof on the
9 defendant at

10 Dated this day of, 19....

11

12 Justice of the peace

13 By:.....

14 Clerk of small claims

15 division

16 NEW SECTION. Section 8. Hearing date. The date for
17 the appearance of the defendant to be set forth in the order
18 shall be determined by the justice of the peace or by his
19 clerk in accordance with rules adopted by the justice of the
20 peace and may not be more than 40 or less than 10 days from
21 the date of the order. Service of the order and a copy of
22 the sworn complaint shall be made upon the defendant not
23 less than 5 days prior to the date set for his appearance by
24 the order. If the order is not timely served, the plaintiff
25 may have a new appearance date set by the justice of the

1 peace or his clerk and a new order issued and delivered to
2 the sheriff, constable, or other process server. If
3 necessary, repeated orders may be issued at any time within
4 1 year after the commencement of the action.

5 NEW SECTION. Section 9. Service on defendant. The
6 original of the order and notice shall be shown to the
7 defendant, and a copy of it along with a copy of the sworn
8 complaint shall be served upon the defendant by the sheriff,
9 constable, or other process server in the same manner
10 provided by law for service of process in civil actions in
11 justice's court. The provisions of law relating to sheriff's
12 fees are applicable to this section.

13 NEW SECTION. Section 10. Return of service. The
14 sheriff, constable, or other process server shall, after
15 affecting service, return the original order to the justice
16 of the peace or his clerk.

17 NEW SECTION. Section 11. Defendant's counterclaim.
18 (1) The defendant may assert a counterclaim against the
19 plaintiff arising out of the same transaction or occurrence
20 that is the subject matter of the plaintiff's claim by
21 appearing before the justice of the peace and executing a
22 sworn small claims counterclaim in substantially the same
23 form as set forth in subsection (3). The defendant shall
24 cause the counterclaim to be served on the plaintiff not
25 less than 72 hours before the date set for the hearing.

Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed \$750. If a counterclaim or setoff is asserted in excess of \$750, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF

..... COUNTY, MONTANA

BEFORE, JUSTICE OF THE PEACE

.....

.....

Plaintiff

vs. Counterclaim

..... Case No. ...

.....

Defendant(s)

.....
Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of \$..... for
.....
.....
which sum is now due, together with defendant's costs herein expended.

Dated this ... day of, 19...

.....
Defendant

.....
Defendant's address

Subscribed and sworn to before me this day of, 19...

.....
Justice of the peace

By:

Clerk, small claims division

NEW SECTION. Section 12. No further pleadings. No form of pleading other than the complaint, the order of the court/notice to defendant, and the counterclaim of the defendant, if there is one, is allowed.

NEW SECTION. Section 13. Fees. (1) The clerk of the

SB 485

1 justice's court shall collect a fee of \$5:

2 (a) from the plaintiff upon the filing of the sworn
3 complaint; and

4 (b) from the defendant upon his appearance and
5 contesting of the complaint or execution of a counterclaim.

6 (2) The laws relating to paupers' affidavits apply to
7 actions before the small claims court.

8 NEW SECTION. Section 14. Proceedings to be informal.
9 The hearing and disposition of small claims actions shall be
10 informal.

11 NEW SECTION. Section 15. Witnesses -- evidence --
12 subpoena power. The plaintiff and the defendant may offer
13 evidence in their behalf by witnesses appearing at such
14 hearing in the same manner as in other cases arising in
15 justice's court or by written evidence, and the judge may
16 direct the production of evidence as he considers
17 appropriate. The small claims court has the subpoena power
18 granted to justices' courts in all civil cases.

19 NEW SECTION. Section 16. Record of proceedings. All
20 civil actions tried in a small claims court shall be
21 recorded either electronically or stenographically.

22 NEW SECTION. Section 17. Removal to justice's court.
23 Any action commenced in small claims court may be removed to
24 justice's court by a defendant upon the filing of a notice
25 of removal with the justice within 30 days of the service of

1 the complaint and order. From the time of filing of the
2 notice of removal, the court to which the action is removed
3 has and exercises the same jurisdiction over it as though
4 the action had been originally commenced in such court.

5 NEW SECTION. Section 18. Procedure following notice
6 of removal. Upon the filing of a notice of removal, the
7 court shall give notice of that fact to all other parties
8 to the action. All rules and statutes governing proceedings
9 originally commenced in justice's court are applicable to
10 proceedings removed to justice's court, except that a
11 plaintiff is not required to replead unless the court so
12 orders and no fee shall be required of a plaintiff for the
13 filing of a complaint if a fee for filing was paid in small
14 claims court.

15 NEW SECTION. Section 19. Entry of judgment. Upon the
16 conclusion of the case tried to the court, the justice shall
17 make his findings and enter judgment.

18 NEW SECTION. Section 20. Costs. The prevailing
19 party in an action before the small claims court is entitled
20 to his costs.

21 NEW SECTION. Section 21. Appeal to district court --
22 commencement and scope of. (1) If either party is
23 dissatisfied with the judgment of the small claims court, he
24 may appeal to the district court of the county where the
25 judgment was rendered. An appeal shall be commenced by

giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal shall be limited to questions of law.

NEW SECTION. Section 22. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

NEW SECTION. Section 23. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice's court, but in its discretion it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be

computed as prescribed by law.

NEW SECTION. Section 24. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

Section 25. Section 25-31-112, MCA, is amended to read:

"25-31-112. Fees. The following is the schedule of fees which, except as provided in [section 18], shall be paid in every civil action in a justice's court:

(1) \$5 when complaint is filed, to be paid by the plaintiff;

(2) \$5 when the defendant appears, to be paid by the defendant;

(3) \$5 to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the \$5 for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) \$5 for all services in an action where judgment is rendered by confession;

(5) \$5 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Section 26. Repealer. Title 25, chapter 35, MCA, is

LC 1524/01

- 1 repealed.
- 2 Section 27. Effective date. This act is effective on
- 3 passage and approval.

-End-

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>SENATE</u> BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
SB 403	2/09/81	2/14/81	2/14/81	2/14/81					
SB 404	2/09/81	2/14/81	2/14/81	2/14/81					
SB 407	2/09/81	2/14/81	2/14/81	2/14/81					
SB 411	2/10/81	2/14/81	2/14/81	2/14/81					
SB 420	2/23/81	hold to kill							
SB 421	2/23/81	hold to kill							
SB 438	2/23/81	hold to kill							
SB 468	2/14/81	2/18/81	2/19/81	2/19/81					
SB 475	2/14/81	2/18/81	2/19/81			2/19/81			
SB 477	2/14/81	2/18/81	2/19/81		2/19/81				
SB 478	2/14/81	2/18/81	2/18/81		2/18/81				
SB 479	2/14/81	2/18/81	2/18/81	2/18/81					
SB 485	3/23/81	3/25/81	3/25/81			3/25/81			
SB 486	3/23/81	3/25/81	3/25/81	tabled					

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 25, 1981

The fifty-second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

Every member was present.

CONSIDERATION OF AMENDMENTS TO COMMITTEE BILLS:

Relative to the two proposed committee bills drawn for the purpose of reinstituting the small claims court system in Montana, amendments had been prepared by David Niss which would answer some of the problems described by Gladys Vance, a Cascade County justice.

Senator Anderson described the problem in Cascade County as being one of scheduling ten or fifteen cases to be heard, only to have one or two appear at the given time. He said that the suggested amendments would help the non-appearance problem.

Mike McCabe, Helena justice, said that the problem is much worse in Cascade County than it is anywhere else in the state, and the present default provision is adequate remedy if it is just used. He also objected to the six-day response requirement contained in the bills.

Senator Mazurek stated that he also disliked the amendments because they turned the small claims court into something more complicated and therefore less available to the people it is intended to help.

Senator Crippen felt that the amendments would do the reverse of the intent of the bill, which is to get more of these actions settled in the small claims court.

CONSIDERATION OF SENATE BILL 485:

CREATING A SMALL CLAIMS COURT
PROCEDURE WITHIN JUSTICE'S
COURT (REMOVAL PROVISION)

David Niss explained that the bill would repeal all of current Title 25, chapter 35, relative to the small claims court within justice's court. He pointed to the two new

sections, 17 and 18, dealing with removal.

Mike McCabe rose to support the bill because it does not provide for an appeal de novo. He suggested that on page 4, subsection (2), the requirement that the attorney general distribute sufficient pamphlets be changed since no appropriation exists to pay for this distribution. He said that on page 7 the language relative to setting the hearing was unnecessary, and that all the notifications required for this would cost additional money. He added that on page 9, subsection (2), because of the limit's having been raised to \$3,500 for justice court claims, the language specifying which court should be used was unclear.

John Maynard, assistant attorney general, supported the bill as being preferable to SB 486, and submitted a "Technical Assistance Report" (attached Exhibit A) prepared by the National Center for State Courts on the subject of Montana's justice courts.

Senator Mazurek asked John Maynard if a provision for the defendant's having to pay the plaintiff's attorney's fee in the event he lost his appeal might not be fair, and something which should be added.

CONSIDERATION OF SENATE BILL 486:

CREATING A SMALL CLAIMS COURT
PROCEDURE WITHIN JUSTICE'S
COURT (APPEAL PROVISION)

David Niss said that the bill provides for an appeal de novo to the district court, and that the only section in this bill which is new is Section 18, on page 11, which provides for such an appeal. These provisions included requirements for a bond and costs, and inconvenience if the execution of the small claims judgment is stayed.

Mr. McCabe opposed this bill by saying that SB 485's provisions would cover the positive aspects of SB 486, and SB 486 fails to provide a speedy remedy.

Senator Crippen asked Mr. McCabe if the trial de novo feature in SB 486 might force the parties to accept the decision of the small claims court because of the delay which would result otherwise, and asked if this did not conflict with the purpose of the small claims court, which is to expedite cases.

Mr. McCabe said that it would do nothing to prevent an appeal.

Senator Mazurek asked whether, in Section 18, there would be

a conflict, and said that there should be an exception added if the bill is passed, insuring that Section 22 would deal with the appeal. He also wondered, in cases that are removed from small claims court to justice's court, if there was a constitutionality problem because no distinction was made between what is "removed" and what is not.

David Niss said that there would be no constitutionality problem because a waiver has been made to a jury trial under those circumstances. He added that Gladys Vance had mentioned other problem areas, specifically 1) limiting to three the number of complaints per person per year which could be brought in small claims court; 2) defendants' denying prior knowledge of the charges being brought; and 3) including in the attorney general's publication advice to defendants as well as to plaintiffs if an answer is to be required as proposed in the offered amendments.

The committee decided to have Chairman Anderson write to the Cascade County justice advising her that the committee had decided not to include her suggestions in either bill, and giving her the reasons for their decision.

DISPOSITION OF SENATE BILL 486:

Senator Berg moved that the bill be TABLED, and his motion passed unanimously.

DISPOSITION OF SENATE BILL 485:

Senator S. Brown moved the second amendment as shown on the attached Committee Report, and his motion carried unanimously. Senator Mazurek moved the remaining amendments shown on the attached Committee Report, and they passed unanimously except for the New Section 25 included in the eighth amendment, which Senator Olson opposed. Senator Berg moved that the bill DO PASS AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 536:

Senator Mazurek moved that the bill BE CONCURRED IN, and his motion passed over Senator Tveit's objection.

DISPOSITION OF HOUSE BILL 815:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator Tveit moved that the bill BE NOT CONCURRED IN AS AMENDED, and his motion passed over the opposition of Senators Mazurek, Berg, and S. Brown.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 25,

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Abdullah Alkayyoud

DATE: 3/25/81

ADDRESS: Rm 235 State Capitol

PHONE: 444-7026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: SB 485-486

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 25, 1981

COMMITTEE ON JUDICIARY

SENATE BILL NO. 485 & 48

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

12

Exhibit 1

TECHNICAL ASSISTANCE REPORT
FOR THE SMALL CLAIMS COURT
YELLOWSTONE COUNTY, MONTANA

Prepared by:

Randy Wolfe
Steven Weller

National Center for State Courts

This report was supported by grants from the Florence V. Burden Foundation and the McDonald's Corporation. The opinions expressed herein are those of the authors and do not necessarily represent the positions of the Florence V. Burden Foundation, McDonald's Corporation, or the National Center for State Courts.

INTRODUCTION

The Yellowstone County Justice Court is a court of limited jurisdiction handling criminal actions (including deputy sheriff's citations, county attorney filings, vehicle weight violations, public service commission citations, violations of dog ordinances, Highway Patrol citations, and Fish and Game citations), civil actions (involving monetary amounts of \$1,500 and less), and small claims actions (involving amounts of \$750 and less). The two-judge court handles almost 18,000 filings each year (17,891 actions were filed in 1979.) Approximately 17% of these filings are civil and small claims actions.

Judge Pedro Hernandez and Judge Janet Eschler of the Yellowstone County Justice Court have been examining various aspects of their small claims procedures in hopes of improving the process. They requested technical assistance from the National Center for State Courts in this endeavor. Specifically, the National Center was asked to review procedures for scheduling, docketing, and better informing litigants in using the system. In addition, a recent decision by a Montana District Court Judge ruled that, as the Montana Justice Court legislation currently is written, the small claims court in Montana is unconstitutional (see following section entitled The Montana Small Claims Statute). In this regard, the National Center also was requested to analyze the small claims court statute and public relations efforts of the small claims court.

Ms. Randy Wolfe, Project Director of the Small Claims Assistance Project and Dr. Steven Weller, former project director of the project and consultant to the National Center, visited the Yellowstone County Small Claims Court on

September 11 and 12, 1980 to observe their operation. The primary issues identified and discussed during the visit and included in this report are:

- Statutory analysis and recommendations,
- public relations,
- litigant handbooks, and
- clerical procedures (scheduling, case filing, and the complaint and docket form).

STANDING COMMITTEE REPORT

..... March 15, 19

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration Bill No. 485

Respectfully report as follows: That Bill No. 485
be amended as follows:

1. Title, line 9.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 3-10-1901 AND"
2. Page 4, lines 22 through 23.
Following: "distribute" on line 22
Strike: "a sufficient number of"
3. Page 7, line 19 through line 20.
Following: "clerk" on line 19
Strike: line 19 through "peace" on line 20
4. Page 9, line 13.
Following: "appropriate"
Insert: "justice or"

DORRASS

continued

March 25, 1931

Page 12, line 6.

Following: the first "removal"

Strike: "."

Insert: " -- effect of failure to remove. (1)"

Page 12, line 9.

Following: "court"

Insert: ", including rules and statutes governing appeals from justice's court,"

Page 12, line 14.

Following: "."

Insert: "(2) Failure to request removal within the time provided in [section 17] constitutes a waiver by the defendant of his right to trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing."

Page 14,

Following: line 5

Insert: "Section 25. Attorney's fees upon removal or appeal. (1) If a defendant removes a matter to justice's court under the provisions of [section 17] but does not prevail in justice's court, the court shall grant the plaintiff his reasonable attorney's fees, if any. (2) If the parties are represented by counsel on appeal, the court may grant the prevailing party his reasonable attorney's fees, in addition to costs."

Section 26. Section 3-10-1001, MCA, is amended to read:
"3-10-1001. Purpose. It is the purpose of this part and chapter 35-of-title-25 [sections 1 through 24] to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial."
Renumber: subsequent sections

And, as so amended,
~~XXXXXXXXXXXXXXXXXX~~
DO PASS

STATUS SHEET

JUDICIARY COMMITTEE

47 Legislature
SENATE BILLS

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
485	Creating a small claims court procedure within justices' courts; providing jurisdiction.	4/9/81	Berg	4/13/81	Do Pass as Amnd. 4/13/81	4/13/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
April 13, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Teague, who was excused and Reps. McLane, Keedy and Yardley were absent. Jim Lear, Legislative Council, was present.

SENATE BILL 485 SENATOR BERG, chief sponsor, stated the reason the bill is introduced so late in the session is because of the result of a Supreme Court case that was just decided. The Supreme Court decided it was unconstitutional because it did not allow for a jury trial or the use of an attorney. This bill makes changes to correct the problems the Supreme Court has pointed out.

Section 17 allows for a case to begin in small claims court and then allows for removal to justice court if the defendant so desires. It would allow for a jury trial or right to counsel at that point.

Section 18 is a new section that the Senate Judiciary Committee placed in the bill. It deals with the failure to request removal within the time provided. If the plaintiff goes through the small claims court that is fine, but if the defendant wants a jury trial he must say so by requesting removal or waive his rights to a jury trial and counsel.

Section 25 allows for attorneys fees to the prevailing party upon removal. If the defendant desires to go to a jury trial and loses, another benefit would be to charge him attorneys fees. This would prevent frivolous suits in small claims court being removed to justice court.

JOHN MAYNARD, representing the Attorney General's Office, was in support of the bill. He became involved in this after last session. Jack Ramirez sponsored a bill to amend procedures enacted in 1977 to prepare a pamphlet explaining how it works. MAYNARD was involved in the preparation of the pamphlet. The Attorney General's Office argued a case in front of the Supreme Court when this was challenged. It was found to be unconstitutional because it did not provide for a jury trial and right to counsel. It was the plaintiff in the small claims court who had the option to decide whether the sides could be represented by an attorney. If the plaintiff decided to have an attorney, then the defendant could also have one. If the plaintiff, however, decided not to be represented by an attorney, then the defendant could not have an attorney.

MAYNARD stated the small claims courts and justice courts are very active. There are thousands of cases each year. This is a quick and easy way to settle disputes.

There were no further proponents.

There were no opponents.

In closing, SENATOR BERG stated there was an editorial in the Missoula newspaper opposing this bill. The article stated we do not need this because it is allowed in the law already by going to district court. The Senator stated the district court small claims division is available under the law but is has not yet been used in the state. This provides for trial and attorney fees, somewhat contrary to the purpose of being a speedy inexpensive method of justice. In the Great Falls area this has worked throughout many cases. There has been problems, but they have all been corrected.

REP. EUDAILY asked if the new section 12 takes care of both problems, that being attorneys fees and the right to a jury trial. The Senator replied yes. MAYNARD stated if you have a case in small claims court for \$150 you will not likely pay an attorney \$100 to represent you. It is the defendant's choice to have an attorney. If he does not want an attorney, the plaintiff has to send his attorney home. The defendant can remove it to justice court. REP. EUDAILY asked if the defendant wanted to go to justice court he could. MAYNARD replied in justice court you have the opportunity to be your own attorney. If you remove that opportunity, then either side can be represented by an attorney.

It was asked by REP. HANNAH if both procedures are necessary to be in the law. REP. HANNAH further stated if you had justice court as it is now, no attorney would be allowed if you did not want one. The appeal procedure would still be in effect. Could the court hold that unconstitutional? MAYNARD stated it would depend on the scope of appeal. When appealing to district court a tape recording and exhibits of what happened at the lower court is reviewed. There is not actually a new hearing or trial de novo as it is called. In California they have an appeal system. Senate Bill 486 would have provided for a whole new trial. District courts, however, are so overloaded it would not be a good form of speedy justice.

REP. CURTISS asked if we can deny a person's right to a trial by jury. MAYNARD replied that is what the old law did. Under this law the person has the right to choose. He can waive the right to a jury trial.

REP. HANNAH asked how this would work, by district or justice court. It was replied that is was by justice court. MAYNARD told the committee when there is a case in small claims court it is because

of a lack of understanding between two parties. A landlord would probably not have an attorney for this type of case because of the expense involved, MAYNARD stated in response to REP. HANNAH's question concerning landlords.

SENATOR BERG stated section 25 will limit the use of attorneys. The landlord that hires an attorney must be very certain of his case or if he loses he will have to pay the other attorney's fees.

REP. KEYSER noted not all the new sections are actually new sections because of the old law being repealed. MAYNARD stated because of the way the Supreme Court's opinion was worded the whole thing had to be thrown out. SENATOR BERG stated the old law did not have a severability clause. The actual new parts are sections 17, 18, 25 and 26, while the balance of the bill merely reenacts the former provisions.

REP. BROWN asked if the present bill has a severability clause. No, it does not.

REP. BENNETT asked what the average amount of a claim in small claims court is. MAYNARD replied \$1,500 is the most common figure.

There was no further discussion on the bill.

The committee went into EXECUTIVE SESSION on SENATE BILL 485.

REP. EUDAILY moved do pass.

REP. EUDAILY asked if a severability clause was necessary. JIM LEAR replied that a severability clause is just decoration on a bill. It is not really necessary to have one. REP. BROWN stated in Washington D.C. bills were not considered if a severability clause was not included. JIM LEAR clarified that state legislation was construed by state, not federal rules, of statutory construction and that in Montana, the severability clause is not mandatory but creates a presumption that the legislature intended severability.

REP. BENNETT felt the figure of \$750 should be increased to \$1,500 or \$2,500. This would help save time in district courts and would allow an option to go to one court or the other. REP. KEYSER stated the district court can remove cases to small claims court division of justice court if they do not go up to \$500.

REP. IVERSON stated the amount listed in section 3 (\$500) and the amount listed in section 2 (\$750) do not have to be the same to be consistent. In fact, they probably should not be the same. REP. KEYSER disagreed.

REP. MATSKO stated anyone can take claims to district or small claims courts. District court might make the person go to small claims court to keep their dockets clear. This might deprive someone from going to district court. JIM LEAR stated there are grievances that do not involve money but are very complex. Many times the parties want the hearing in front of a judge that has experience.

It was moved by REP. BENNETT to strike \$750 and insert \$1,500 on page 2, line 25 of the bill, and to make it consistent throughout. REP. MATSKO questioned whether the bill would survive with amendments this late in the session. REP. IVERSON felt the Senate would suspend the rules.

REP. SHELDEN felt the committee should leave the bill as it is and let it go for two years.

A roll call vote resulted on the amendments. Those voting yes were: KEYSER, BENNETT, CONN, HANNAH, IVERSON, MATSKO, and BROWN. Those voting no were: SEIFERT, CURTISS, EUDAILY, ANDERSON, ABRAMS, and HUENNEKENS. The amendments carried 7 to 6.

REP. BENNETT stated the committee should make it consistent in both places. REP. EUDAILY disagreed. REP. KEYSER stated the new section that allows for jury and court costs meets the objections of the court. Raising it to \$1,500 will reduce pressure on the court.

It was stated by REP. MATSKO that by allowing district court to remove cases back to small claims court some judges might dismiss cases to the lower courts to have the day off.

JIM LEAR stated the amount could be left at \$500 without conflicting with the amendment already passed. It would not impact on an individual's rights.

REP. BENNETT moved to strike \$500 and insert \$1,500 on page 3, line 6. REP. CURTISS was opposed to the amendment because she felt the bill might not go through the Senate.

REP. HANNAH was concerned with the rushing of the bill. He felt the committee was not examining the bill closely enough.

REP. HUENNEKENS supported the amendment. This will help cope with the change in currency.

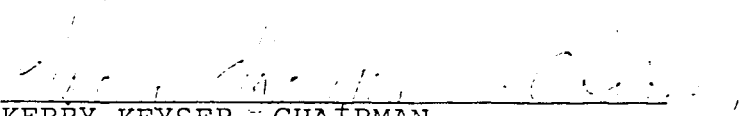
The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, HANNAH, IVERSON, HUENNEKENS, and SHELDEN. Those voting no were: CONN, CURTISS, EUDAILY, MATSKO, ANDERSON, ABRAMS, and BROWN. The amendment failed by a tie vote of 7 to 7.

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REP. EUDAILY asked about the figure used in district court. It was replied \$3,500 is the amount in district court as passed by a bill in the House.

REP. SHELDEN moved do pass as amended. The motion carried unanimously. REP. KEEDY was assigned to carry the bill on the House Floor.

The meeting adjourned at 9:10 a.m.


KERRY KEYSER, CHAIRMAN

mr

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE
BILL 485

Date April 13, 1981

SPONSOR BERG

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.